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4 UNITED STATES DISTRICT COURT
5 FOR THE WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 ANGELA SANTIAGO,

8 Plaintiff,

9 v.

10 GEICO ADVANTAGE INSURANCE
11 COMPANY,

12 Defendant.
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CASE NO. 2:22-cv-01370-RSL

ORDER GRANTING DEFENDANT’S
MOTION TO COMPEL A RULE 35
EXAMINATION

15 This matter comes before the Court on “GEICO’s Motion to Compel FRCP 35
16 Examination.” Dkt. # 25. Having reviewed the memoranda, declarations, and exhibits
17 submitted by the parties, the Court finds as follows:

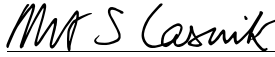
18 Pursuant to Federal Rule of Civil Procedure 35(a), the Court “may order a party
19 whose mental or physical condition . . . is in controversy to submit to a physical or mental
20 examination by a suitably licensed or certified examiner” if the requesting party shows
21 good cause for the examination. Plaintiff alleges that she was injured in a car accident
22 caused by the negligence of Latisha Allen. Plaintiff filed a lawsuit against Ms. Allen in
23 July 2021 and was awarded \$101,142.08 in damages. Ms. Allen’s insurer paid its policy
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limits of \$25,000. Defendant GEICO Advantage Insurance Company refused to pay the balance of the arbitration award under plaintiff's underinsured motorists ("UIM") coverage. Plaintiff filed this lawsuit seeking payment of \$76,142.08 or, in the alternative, "such amount to be established at time of trial." Dkt. # 1-3 at ¶ 5.1(a).

If, as plaintiff asserts, the sole issues in this case were whether defendant is contractually obligated to pay the balance of the arbitration award and whether it violated Washington's claims handling regulations when it refused to pay that amount, plaintiff's physical condition would not be in controversy and there would not be good cause to order a Rule 35 examination. But plaintiff has left open the possibility of seeking other types of damages if her claim for payment of the arbitration award fails. Because the damages in this matter may ultimately be tied to the nature and scope of plaintiff's injuries, she will be required to submit to a physical examination.

For all of the foregoing reasons, defendant's motion to compel a Rule 35 examination is GRANTED. Plaintiff shall submit to an examination conducted by Dr. Dave Nicholes at a mutually agreeable time in the next thirty days. Plaintiff shall notify defendant of her availability within three days of the date of this Order.

Dated this 22nd day of June, 2023.


Robert S. Lasnik
United States District Judge